



Memorandum

To: Panel Members Date: September 25, 2003

From: Creighton Chan, Field Office Manager
Through Peter DeMauro, General Counsel Analyst A. Nastari

Subject: SMALL BUSINESS FAST TRACK AGREEMENT FOR EMPLOYERS WITH 100 OR FEWER EMPLOYEES

Contractor's Legal Name: Santa Cruz Millwork

Agreement Term Dates: October 6, 2003 through June 30, 2004

Turnover Rate: 13%

County(ies) Served: Santa Cruz Rural: Yes _____ No X

Number of Full-Time Workers: 8 Number to be Trained: 8

Occupations to be Trained: Administrative Staff, Production Staff, **Owner

Range of Hourly Wages at Retention: *\$10.98 - \$50.00

Health Benefits: Health benefits of at least \$.45 per hour will be added to meet the ETP minimum wage of \$10.98 per hour for Santa Cruz County.

Type of Industry: Manufacturing

Nature of Business: Manufacturer of customized wooden doors and windows

Training Project Profile: Out-of-State Competition

Repeat Contractor: ***Yes

Strategic Category/Legislative Priority: Promotion of California's Manufacturing Workforce; Moving to a High Performance Workplace

Type of Training: Business, Computer, Continuous Improvement, and Manufacturing Skills

ETP Funding Amount: \$5,720

Employer Contribution: \$5,285

Average Cost per Trainee: \$715

Union Representation: N/A

Referred By: N/A

Subcontractors: To be determined

Comments:

Contractor agrees that during ETP-funded training hours, trainees will not produce products or provide services which will ultimately be sold.

** The owner meets Title 22, California Code of Regulations, Section 4407.1 for small business owners.

Besides the owner, no company executive who sets company policy will be trained under this Agreement.

Only one manager, (13%) will be trained with ETP funds.

*** This is the Contractor's second SBPP ETP Agreement. Under the first Agreement, the company had an 86 percent completion rate.

The training in the first Agreement focused on setting the foundation for the company's move to a high performance workplace.

Employees were introduced to lean manufacturing and some team building skills. This was an important portion of the training and therefore, only a small portion of manufacturing skills was provided. The company was able to provide some introductory computer and business skills to its administrative staff.

The training in this proposal builds upon the skills acquired in the first Agreement. Continuous improvement skills allow the company to continue its move to the next level in lean manufacturing. The company has implemented some new processes as a result of the training. Under the new Agreement, the company will provide the manufacturing skills it had originally intended. The computer skills will be in advanced Computer Aided Design (CAD) software programs needed for the computerized design of its products. The business skills will primarily be given to an administrative staff person that the company was not able to include in its first Agreement because the person did not meet the ETP minimum wage requirement.

The company's representative reports that during and after the delivery of the above-mentioned training, it has provided on-the-job training at its own costs, which supplements those skills acquired from the ETP-funded training.

EMPLOYMENT TRAINING PANEL TRAINING AGREEMENT for Small Businesses with 100 or Fewer Employees

TERMS, CONDITIONS, AND TRAINING PLAN

1. **Term:** This Agreement is entered into between the Employment Training Panel (ETP) and Santa Cruz Millwork (Contractor). The term is October 6, 2003 through June 30, 2004.
2. **Payments:** ETP shall pay the Contractor no more than \$5,720 computed on a fixed-fee reimbursement of \$20.00 per training hour in accordance with the following Chart:

| Job # | Number of Trainees to Retain | Required Class/Lab Training Hours | Trainee Will Receive One or More of the Following: | Cost Per Trainee | Payment Schedule | | Hourly Health Benefits | Wage at Retention |
|-------|------------------------------|-----------------------------------|--|------------------|---|--|------------------------|--------------------|
| | | | | | PP1 (Enrollment & 8 hours of training) | Final Payment (Training and Retention Completed) | | |
| 1 | 6 | 39 | *Business Skills *Computer Skills | \$780 | \$390 | \$390 | \$.45 | *\$10.98 - \$50.00 |
| 2 | 1 | 24 | *Continuous Improvement Skills | \$480 | \$240 | \$240 | \$.45 | *\$10.98 |
| 3 | 1 | 28 | *Manufacturing Skills | \$560 | \$280 | \$280 | \$.45 | *\$10.98 |

*Business Skills: Business Performance, Administration, Sales, Customer Service

*Computer Skills: Advanced Computer-Assisted Design (CAD), Computer-Aided Manufacturing (CAM), Intermediate/Advanced Computer Software Skills, Solid Works (CAD Program)

*Continuous Improvement Skills: Intermediate Lean Manufacturing, Teambuilding, Process Improvement

*Manufacturing Skills: Production Operations, Products Manufacturing, Assembly, Equipment Operation

Contractor is responsible for providing 100 percent of the required number of training hours to each trainee in each Job.

3. **Administration:** Contractor is directly responsible for the administration and all training delivered under the term of the Agreement.
4. **Performance:** Earnings are contingent upon the completion of all performance requirements. Contractor shall ensure that ETP or its representative, including the Bureau of State Audits, has the right during normal business hours, to examine, reproduce, monitor and audit accounting source payroll documents, and all other records, books, papers, documents, or other evidence directly related to the performance of this Agreement by the Contractor and available for review at the Contractor's place of business, within the State of California. This right will terminate no sooner than four (4) years from the date of termination of the Agreement or three (3) years from the date of the last payment by ETP to the Contractor, or the date of resolution of appeals, audits, claims, exceptions, or litigation, whichever is later.

ETP may audit this Agreement at anytime up to four (4) years following the end of the term of this Agreement. Audits will be performed in accordance with Government Auditing Standards, which include sampling of available records.

ETP shall inform Contractor in writing if performance by the Contractor is not satisfactory and may, at its discretion, suspend any payment and/or performance, including training, under the Agreement or terminate the Agreement as provided herein.

Contractor agrees that during ETP-funded training hours, trainees will not produce products or provide services which will ultimately be sold.

Contractor agrees that during ETP-funded training, the trainee to trainer ratio will not exceed 1:20.

No senior level managers or executive staff who set company policy are included in ETP-funded training under this Agreement.

5. Unearned Funds: Contractor may receive unearned progress payments as indicated in the Chart on page 1 of the Agreement. Any funds invoiced and issued for a trainee who does not have an original signature and valid Social Security Number (SSN) on the ETP 104AUTH on file with ETP must be returned to ETP as unearned monies, with applicable interest.

All unearned monies shall be returned to ETP with statutory interest computed from the first day of the month following the date the funds were received.

6. Indemnification: Contractor shall indemnify, defend, and hold harmless ETP, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all Contractors, subcontractors, laborers, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by Contractor during the term of this Agreement.
7. Governing Rules: This Agreement shall be governed by the laws of the State of California. Contractor shall comply with all applicable federal, state, and local laws, ordinances, and regulations.
8. National Labor Relations Board (NLRB): Pursuant to Public Contract Code Section 10296, by executing the Agreement, Contractor swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board. ETP may rescind any contract in which the Contractor falsely swears to the truth of the statement required by this section.
9. Americans with Disabilities Act: Contractor assures that it shall comply with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 1201 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
10. Drug Free Workplace: Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 *et seq.*) and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations;
 - b. Establish a Drug-Free Awareness Program to inform employees about all of the following:
 1. The dangers of drug abuse in the workplace;
 2. The person's or organization's policy of maintaining a drug-free workplace;
 3. Any available counseling, rehabilitation and employee assistance programs; and
 4. Penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee who works on the Agreement:
 1. Will receive a copy of the company's drug-free policy statement; and

2. Will agree to abide by the terms of the company's statement as a condition of employment on the Agreement.
11. Nondiscrimination: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 *et seq.*) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor shall include the nondiscrimination and compliance provisions of this subparagraph in all subcontracts to perform work under this Agreement.
12. N/A
13. Full-Time Employment: Each trainee must be employed full-time, at least 35 hours per week, with the Contractor for a period of at least ninety (90) consecutive days immediately following the completion of training. Training and the retention period for each trainee must be completed within the term of the Agreement.
14. Entire Agreement: This Agreement shall not be transferred to any other party without the prior written approval of ETP. This is the entire Agreement between the parties and it supersedes any other understanding or writing made between them related to this matter.
15. Subcontractors: Contractor may subcontract for training or administrative services. All subcontracting under this Agreement shall comply in form and content with the requirements of ETP. No third party relationship is intended or created between any subcontractor and the ETP.

The Contractor certifies to the need for training; the training supplements rather than displaces the Contractor's on going investment in the training of its workers; and its in-kind contribution shall be the trainee's salaries while in training.

APPROVED FOR ETP

Peter McNamee, Executive Director

Type Name and Title

Signature

Date

1100 J Street, 4th Floor

Address

Sacramento, CA 95814

City State Zip

(916) 327-5246 (916) 327-5270

Telephone FAX

APPROVED FOR CONTRACTOR

Tom Nedelsky, Owner

Type Name and Title

Signature

Date

2527 Mission Street

Address

Santa Cruz, CA 95060

City State Zip

(831) 423-2031 (831) 423-1379

Telephone FAX

| | | | | |
|--|-----------------|---------|---------|-------------|
| Amount Encumbered | Item | Chapter | Statute | Fiscal Year |
| \$5,720 | 7100-001-0514 | 157 | 2003 | 2003-2004 |
| Fund | Object & Code | | | |
| Employment Training Panel | 96874-03930-936 | | | |
| I hereby certify that budget funds are available for the period and purpose of the expenditure stated above. | | | | |
| Signature of Accounting Officer | | | | Date |
| I hereby certify that the Agreement does not fall within the meaning of Section 10295 of Chapter 2 of Part 2 of Division 2 of the Public Contract Code of the State of California and pursuant to 58 OPS. CALL ATTY. GEN. 586 is exempt from review or approval of the Department of General Services and the Department of Finance. | | | | |
| Signature on Behalf of the Agency | | | | Date |

SUBCONTRACTS

The following information must be included in any subagreement between the Contractor and its subcontractor(s) for any work performed under this Agreement:

- (A) The name, title, address, and phone number of the signatory authority for the Contractor and subcontractor;
- (B) The inclusive dates of the term of the subagreement contract; and
- (C) A detailed explanation of the services to be provided under the subcontract and the negotiated amount of the subagreement contract. Administrative subagreement contracts that represent more than 40 percent of the primary contractor's total administrative budget shall be performance-based and final payments for services rendered under these subagreements contracts shall not be earned until trainees complete both the training and also the specified employment retention period.

In addition, the language in subparagraphs (D) - (L) must be included *verbatim* in any subagreement for any work performed under this Agreement between the Contractor and its subcontractor(s), unless a modification is agreed to in writing by ETP:

- (D) "ETP is not a party to this Agreement nor is subcontractor a beneficiary in any way under the Agreement between ETP and the Contractor. ETP shall not be obligated in any manner to the subcontractor for any liability to subcontractor that may arise out of this Agreement. No third party relationship is intended or created between any subcontractor and ETP."
- (E) "ETP, or its authorized representative, upon reasonable notice, shall have the right, during normal business hours, to examine and audit any and all records, books, papers, and documents related to the conduct of the training or services provided to the Contractor by the subcontractor to the extent ETP believes necessary to assure compliance with the ETP Agreement. Contractor shall ensure that ETP has access to all subcontracts and other records that adequately identify the hours and types of training or services provided to the Contractor by the subcontractor and the number of subcontractor personnel involved in this work. Upon prior reasonable notice from ETP, Contractor shall provide ETP with copies of any subcontracts."
- (F) "ETP, or its authorized representative, shall have the right, during normal business hours, to freely observe and monitor all performance under this Agreement, including interviews with trainees and employees without the presence of the subcontractor."
- (G) "All finished or unfinished documents, data, studies, and reports prepared by the subcontractor for the Contractor shall be disposed of under the direction of the Contractor and ETP."
- (H) "To the extent permitted by law, subcontractor agrees to indemnify, defend and hold harmless the Contractor and ETP and their respective officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of the Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation which may be injured or damaged by subcontractor during the Agreement term."
- (I) "Records must be kept for a period of no less than four (4) years from the termination date of the ETP Agreement or three (3) years after final payment under the ETP Agreement, whichever is later."

- (J) "During the performance of any subcontract, subcontractor and any of its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, and denial of family care leave. Contractor and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractor and its subcontractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as is set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement."
- (K) "This Agreement shall be governed by the laws of the State of California. Subcontractor has reviewed the terms and conditions contained in the ETP Agreement and agrees to comply with applicable provisions."
- (L) "This Agreement is effective only if the Agreement between the Panel and the Contractor is executed."